

# Congress of the United States

Washington, DC 20515

December 13, 2004

The Honorable Bob Taft  
Governor  
State of Ohio  
77 South High Street  
Columbus, OH 43215

The Honorable Larry Householder  
Speaker of the House  
Ohio House of Representatives  
77 S. High St  
14th Floor  
Columbus, OH 43215

The Honorable Doug White  
President  
Ohio Senate  
Statehouse  
Room #201 Second Floor  
Columbus, OH 43215

Dear Governor Taft, Speaker Householder & President White:

We write with an urgent request that you either delay or treat as provisional the scheduled December 13 meeting of the State of Ohio's 2004 Presidential electors and the submission of the certificates of ascertainment until resolution of pending recounts and challenges regarding the Ohio presidential vote. We are sure you would agree that no election is final, or should be deemed final, until all votes are counted and disputes are settled.

Notwithstanding federal statutory requirements that electors meet in their respective states on December 13, 2004,<sup>1</sup> it is imperative and necessary under the Constitution of the United States that the State of Ohio delay or treat as provisional its meeting. First, federal law also provides that state legislatures may settle election controversies and contests six days prior to the meeting of electors, such that all disputes would be resolved by December 7, 2004.<sup>2</sup> In this

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<sup>1</sup>3 U.S.C. § 7.

<sup>2</sup>*Id.* § 5.

situation, it does not appear that the Ohio state legislature has made a decision to avail itself of this provision.

Secretary Blackwell declared his results on December 6, so late a date that he engineered a conflict with state recount laws. Ohio law sets two deadlines pertaining to recounts. First, it provides that applications for statewide recounts must be submitted within five days of the secretary of state's declaration of results.<sup>3</sup> Second, such recounts must begin within ten days of the recount request.<sup>4</sup> Moreover, it is worth noting that your state law automatically allows candidates who were not declared winners to seek recounts.<sup>5</sup>

Secretary Blackwell gave county boards of election until December 1 to certify their returns, and then waited to declare his own results on December 6. As a consequence, recounts may be sought at least until December 11 and must begin by December 16. It is impossible, therefore, for the December 6 results to be the official certification of the State of Ohio. The law providing a right to a recount would be an empty right in this scenario.

As you know, at least two presidential candidates in your State have applied for statewide recounts.<sup>6</sup> Seeing the conflicting deadlines contained within federal and state law, these candidates sought to have the recounts begin even before the votes were declared so the deadlines could be reconciled.<sup>7</sup> The federal court hearing the case denied the request for an early recount and also rebuffed a motion by the Delaware County Board of Elections to block a recount entirely.<sup>8</sup> Also, we understand that challenges will be filed today on behalf of Ohio voters to set aside the results of the election in Ohio based on, among other things, massive voter irregularities.

It is important to note that Article II of the Constitution of the United States provides that "each state shall appoint, in such manner as the legislature thereof may direct, a number of

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<sup>3</sup>OHIO REV. CODE ANN. § 3515.02.

<sup>4</sup>*Id.* § 3515.03.

<sup>5</sup>*Id.* § 3515.01.

<sup>6</sup>Mark Niquette, *Formal Requests for Recount Begin*, COLUMBUS DISPATCH, Dec. 8, 2004, at 13B.

<sup>7</sup>Mark Niquette, *Recount Ok'd but Will be too Late*, COLUMBUS DISPATCH, Dec. 4, 2004, at 1A.

<sup>8</sup>*Id.*

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electors," clearly giving the power to the Ohio legislature to finalize Ohio's election results. It appears, unfortunately, that Secretary Blackwell may unlawfully be attempting to have his own results certified. This is because Ohio law does not authorize the Secretary of State to determine the electors for the State of Ohio.

Had Secretary Blackwell not postponed his results so long, it is likely that any recounts would have been completed earlier and we would not be writing to you today. Unfortunately, the Secretary set in motion a series of events that should not penalize the voters of Ohio. It is for these reasons we ask that the State of Ohio hold only a provisional meeting of electors on December 13 and delay submission of the ascertainment of electors. A conclusive meeting of electors and ascertainment could occur after the recounts are completed. Such a scenario still would permit the U.S. Congress to meet in joint session and count the electoral votes on January 6, 2005, as provided by law.

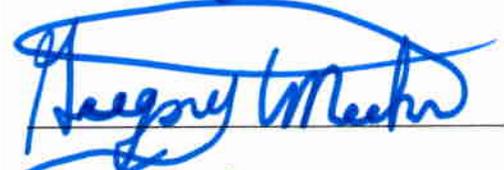
Should you have any questions or concerns regarding this request, please feel free to contact Perry Apelbaum or Ted Kalo of the U.S. House Judiciary Committee staff at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423).

Sincerely,







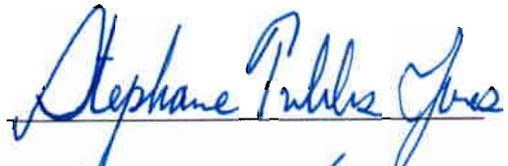
















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cc: The Honorable J. Kenneth Blackwell  
Ohio Secretary of State

Elizabeth Wagner, Republican Elector  
Leslie Spaeth, Republican Elector  
Carl Wick, Republican Elector  
Karyle Mumper, Republican Elector  
Joyce Houck, Republican Elector  
David Johnson, Republican Elector  
Katharina Hooper, Republican Elector  
Owen Hall, Republican Elector  
Betty Jo Sherman, Republican Elector  
Robert Frost, Republican Elector  
Pernel Jones, Republican Elector  
Merom Brachman, Republican Elector  
Gary Suhadolnik, Republican Elector  
Alex Arshinkoff, Republican Elector  
Henry O'Neill, Republican Elector  
Kirk Schuring, Republican Elector  
Randy Law, Republican Elector  
Phil Bowman, Republican Elector  
William Dewitt, Jr., Republican Elector  
Billie Jean Fiore, Republican Elector

Steve Huffman, Democratic Elector  
Charlotte Davidson, Democratic Elector  
Terrence Larrimar, Democratic Elector  
Robert Hamilton, Democratic Elector  
Brenda Griffith, Democratic Elector  
William E. Moore, Democratic Elector  
Richard Henry, Democratic Elector  
Ronnie Wardrup, Democratic Elector  
David E. Giese, Democratic Elector  
Dennis L. White, Democratic Elector  
Dean Depiero, Democratic Elector  
David Staley, Democratic Elector  
John Bender, Democratic Elector

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Capri Cafaro, Democratic Elector

Fran Alberty, Democratic Elector

Shannon Leininger, Democratic Elector

Christ Michelakis, Democratic Elector

Sandy Cox, Democratic Elector

Joe Rugola, Democratic Elector

Joyce Beatty, Democratic Elector